

# **Quality in Services Acquisition**

John M. Palatiello

COFPAES Administrator

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# What is COFPAES?

Council on Federal Procurement  
of Architectural & Engineering Services

A coalition of the nation's leading design professional societies and associations, formed in 1966, to provide a common voice for the profession on Federal procurement issues.

AIA ? ASCE ? ACSM ? NSPE ? MAPPS

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# Federal Acquisition of Architecture, Engineering & Related Services

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- ✍ Qualifications Based Selection (QBS)
- ✍ Tradition since 1800's
- ✍ Codified in 1972
  - "Brooks Act" (40 U.S.C. 1101-1104)
  - PL 92-582
- ✍ Implemented in FAR Part 36.6

# Federal Acquisition of Architecture, Engineering & Related Services

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- ✍ Defined as a “competitive procedure” in CICA in 1984
  - (10 U.S.C. 2302(2)(A))
  - (41 U.S.C. 259 (b)(1))
  
- ✍ Amended in 1988 to Broaden & Update Definition of A/E Services
  - Application to Surveying & Mapping Services Clarified in PL 98-63, PL 100-656, PL 100-679, PL 101-574, PL 102-366, PL 104-208 & PL 105-56.

# OBS Process

1. Agency publicly announces its requirements for A/E (incl. S or M) services

2. Firms wishing to be considered submit Standard Form-330 to the agencies requesting assistance.

3. Agency Evaluation Boards will review and evaluate firm's qualifications in terms of its:

- Professional qualifications
- Specialized experience and technical competence
- Capacity to complete work in time
- Past performance
- Knowledge of locality of project
- Acceptability under other appropriate evaluation criteria

4. The Evaluation Boards will develop a Pre-selection list of the maximum practicable number of qualified firms and the list shall be approved by the head of the agency.

5. An independent governmental estimate of the cost of services shall be prepared for each proposed contract or contract modification

6. Negotiations shall be conducted with the first selected firm (from the pre-selection list) to determine the scope of work and for a price that is fair and reasonable and not in excess of the government estimate.

6a. Contract is awarded

or

6b. If a price below the government estimate cannot be negotiated then the negotiations are terminated and a proposal is requested from the firm next in order of qualifications.

# Why QBS?

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- ✍ S. Rept. 92-1219; Sept. 25, 1972
  - Award based on demonstrated competence and qualifications
  - Negotiation of fee that is fair and reasonable to the government
  - Is a commercial practice “followed to a large degree by the private sector”

# Why QBS?

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✍ S. Rept. 92-1219; Sept. 25, 1972

(quoting House Committee report)

“Competition for Government contracts is based on qualification and experience — terms of competition that qualified members of any profession or field of endeavor are willing to meet.

# Why QBS?

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- ✍ S. Rept. 92-1219; Sept. 25, 1972  
“Under this system, A/E’s are under no compunction to compromise the quality of the design or the level of effort they will contribute to it in order to meet the lower “fee” quotations of other A/E’s.



# Why QBS?

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- ✍ S. Rept. 92-1219; Sept. 25, 1972  
“They are free to suggest optimum design approaches that may cost more to design, but can save in construction costs and otherwise increase the quality of the building or facility to be constructed.

# Why QBS?

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✍ S. Rept. 92-1219; Sept. 25, 1972

“The system protects the interests of taxpayers. Having won the competition on the basis of capability, the winning A/E must then negotiate his fee. He must demonstrate on the basis of projected costs that his fee is fair and reasonable.

# Old Federal Acquisition Continuum

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Low Bid

QBS



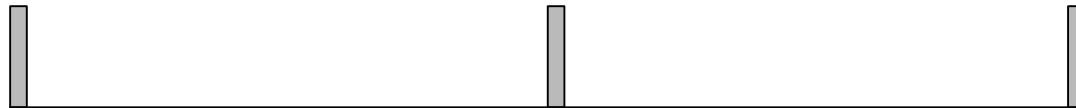
# New Federal Acquisition Continuum

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Low Bid

Best Value

QBS



# Federal Acquisition Continuum

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- ✍ QBS was “best value” and “performance based contracting” **BEFORE** “best value” and “performance based contracting” were cool

# Key Points

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- ✍ A&E Services are not a "commercial item"
- ✍ A&E Services are not IT Services
- ✍ Brooks A&E Act is NOT the old Brooks ADP Act
- ✍ A&E Services are not to be procured via the Federal Supply Schedule (SARA sec. 1427)

# Key Points

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- ✍ QBS has been in the ABA Model Code since Code's inception
- ✍ QBS is the law in more than 30 states; is the practice in most others

# Additional Issue

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- ✍ AAP urged to make recommendation that 18 U.S.C. 1761(a) applies to services



# Additional Issue

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✍ 18 U.S.C. 1761(a)

“Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.”

# Additional Issue

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- ✍ Justice Department ruled in 1998 that provision does **not** apply to services.
- ✍ Opinion by DoJ Office of Enforcement, Criminal Division, **not** Office of Legal Counsel

# Additional Issue

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- ✍ Opinion opens Federal and state prisons to sell services in commercial market.
- ✍ This is the most pernicious form of unfair government competition possible.
- ✍ AAP urged to make recommendation that 18 U.S.C. 1761(a) applies to services



**Questions ???**